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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of)	MM Docket No. 92-2
)	
DRY PRONG EDUCATIONAL)	
BROADCASTING FOUNDATION)	File No. BPED-900305MF
)	
For Modification of Noncommercial)	
Station KVDP(FM), Dry Prong,)	
Louisiana)	
)	
MISSIONARY ACTION PROJECTS)	File No. BPED-900905MK
)	
For Construction Permit for)	
a New Noncommercial FM Station)	
on Channel 210 in)	
Alexandria, Louisiana)	

To: Judge Edward J. Kuhlmann

MOTION FOR SUMMARY DECISION

Comes now Missionary Action Projects (MAP), by counsel, which moves for summary decision of Issue No. 1 of the Hearing Designation Order pursuant to Section 1.251 of the Commission's Rules.¹ In support of its motion, MAP states:

Section 73.503(a) of the Commission's Rules requires that a noncommercial FM broadcast station will be licensed only to a nonprofit, educational organization upon a showing that the station will be used in the advancement of an educational program. The question of MAP's eligibility was first raised by Alexandria Broadcasting Company, licensee of an AM/FM combination

¹ "To determine whether Missionary Action is qualified to be a noncommercial educational FM licensee." HDO, p. 2.

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in Alexandria, Louisiana in a Petition to Deny. At that time, Mr. William D. Franks, MAP's president, declared that MAP was a nonprofit corporation and had as its goal to provide and distribute educational programs and train people in the field of broadcasting. MAP planned to use the station to help resolve community problems and issues. The HDO resolved other allegations of the Petition in favor of MAP but indicted that MAP's submissions had not conclusively proven its eligibility.

In its Orders and case law concerning noncommercial applicants, the Commission has analyzed both the type of entity (educational institution or organization) and reviewed the programming proposed to determine eligibility. An educational organization (but not an institution) is required to express an educational goal and have a proposal to advance an educational purpose.

The Commission does not require a noncommercial applicant be accredited at the state, regional or national level although accreditation may be considered in determining eligibility as an applicant. A nonprofit corporation with the stated purpose of establishing and operating a nonprofit, noncommercial educational radio station has been held to be an educational organization within the meaning of the rule.² Lower Cape Communications, Inc. was a nonprofit corporation organized and registered in Massachusetts with the stated purpose of establishing a nonprofit, noncommercial educational radio station in Provincetown. The Commission found conclusively that its

² Lower Cape Communications, Inc., 47 RR2d 1577 (1980).

organizational status and limited statement of purpose was adequate to establish Lower Cape as an educational organization within the meaning of Section 73.503(a).

In 1978 the Commission initiated a Notice of Inquiry into eligibility for noncommercial FM and TV broadcast station licenses.³ In that NOI, the Commission admitted problems with the standards it used to scrutinize noncommercial applicants and inquired whether the existing rules concerning eligibility should be changed. The Commission also requested comments on how proposed programming should be construed. In pertinent part, the inquiry acknowledged that an organization was required to demonstrate that it had an educational goal and was committed to advancement of educational program although an institution was not. It recognized that noncommercial stations presented a wide variety of programming including light entertainment, gospel, popular music and sports and noted that the Commission's review of these programs might run afoul of the First Amendment. (The Commission then categorized programs as "instructional" (for scholastic credit) or "general educational" but indicated it deferred to the judgement of the broadcaster unless his categorization appeared arbitrary or unreasonable.)⁴

After a long period of dormancy, the Commission abandoned the inquiry in 1990 without any resolution of the questions it

³ 43 Federal Register 30842 (July 13, 1978), attached hereto as Exhibit A.

⁴ Id. at 30845.

posed.⁵ In its termination Order, the Commission stated that it would continue to use its existing standards as reflected in the NOI released twelve years earlier.

The Commission has always given reasonable discretion to the licensees of public broadcast stations to determine and provide to their communities meaningful programming designed to satisfy the educational interests of the public.⁶ Even in 1984, the Commission noted a significant movement among public stations to specialized format and stated that they expected the trend to continue. This was said to increase the diversity of programming available to the public.⁷ The obligation of a noncommercial licensee is to determine and present issue-oriented programming for its particular community of license.

Lower Cape reaffirmed that the requirement of an educational purpose permitted a wide variety of programming. Applicants are not restricted to only general educational and institutional programs. The Commission, citing Florence Bridges⁸ recognized that a noncommercial educational station was permitted to broadcast a wide array of programs including educational, cultural and entertainment programs to the public.

The MAP application was submitted on September 5, 1990 in response to a cut-off date set for the competing application of

⁵ FCC 89-371, released January 11, 1990.

⁶ Revision of Program Policies and Reporting Requirements Related to Public Broadcast Licensees, 56 RR2d 1157 (1984).

⁷ Id. at 1162.

⁸ 44 RR 2d 677 (1978).

Dry Prong Educational Broadcasting Foundation. In its application, MAP declared:

The applicant will seek to develop relationships with schools, educational institutions and other traditionally educationally oriented charitable and public service organizations.

The applicant will utilize the facilities of the station to support the educational programs of the community: by broadcasting instructional programming, by broadcasting programming of substantial educational value to the whole community, particularly seeking to present materials the applicant determines to be needed to bring balance to the educational needs of the community, and by utilizing the station as appropriate for training students in the skills necessary for service in the broadcasting industry.

The applicant proposes to offer instructional, talk, music appreciation, news and family oriented programming.⁹

MAP believes that this statement from its original application is sufficient to meet the Commission's most recent articulation of the test for statement of an educational goal for eligibility as a noncommercial broadcaster. In Palm Bay Public Radio, Inc., the Commission stated that it "has routinely granted construction permits to applicants for educational radio stations whose stated purpose was to develop educational programming for their community of license."¹⁰ In fairness to the FM processing staff, the Palm Bay decision was not rendered by the Commission until after the pleading cycle on the Petition to Deny was completed and Palm Bay was not cited in the pleadings. Palm Bay also noted the demise of the required program list and the

⁹ Excerpt from the application of MAP, dated September 5, 1990, attached hereto as Exhibit B.

¹⁰ 68 RR2d 1566, 1569 (1991).

staff's review of the programs in the revision of the FCC Form 340. The Commission approved of Palm Bay's promise "to provide educational programming responding to the needs and interests of the Palm Bay community."¹¹

In response to the Petition to Deny, MAP submitted a declaration from William D. Franks, its president. That declaration is attached hereto as Exhibit C. In it, Mr Franks states that MAP is "an ongoing community service organization which has been established for the past ten years in missionary, charitable and educational causes." MAP has organized, raised funds for and helped in the construction of a number of schools. Mr. Franks also put forward his background in charitable, eleemosynary, and educational causes. He operated a school in the 1960's and the 1970's; he serves on the Board of Trustees of the Mid-America Bible College in Oklahoma City, Oklahoma and has done so for the past thirteen years; and he is a fund raiser for educational causes. Mr. Franks stated that MAP's goals were to provide educational programs to undeserved audiences in its service area.

I believe radio to be a most effective tool when used in the educational field. MAP has its desire and objective to provide and distribute programs and to train people in the field of broadcasting.

MAP will, through this broadcast medium, seek to help to resolve community problems and issues. MAP will provide news coverage, public service announcements and public affairs programming to inform and educate the public in developing a better community. MAP will bring an awareness of opportunities and needs of the communities in its service areas.

¹¹ Id. at 1569.

MAP proposes to provide programming and educational opportunities for the large black population of Alexandria. To accomplish this, MAP will work closely with the black educational institutions and black churches in the absence of other significant media attention being directed to these groups in Alexandria. I perceive a need for a noncommercial educational station to serve the black audience.

Another ethnic group, although somewhat smaller, whose needs are not being met, is the Hispanic community, MAP proposes to offer educational and religious broadcasts in the Spanish language. To the best of my knowledge I do not know of any Spanish programming in the Alexandria area.¹²

Mr. Franks also put forward a list of daily and weekly programs for FCC review which he felt would address the educational needs of the community. He stated that MAP would carefully observe all FCC's prohibitions on its operations as a noncommercial station, and indicated that the station would be operated on a non-sectarian basis offering its facilities to all educational institutions regardless of denominational affiliation.

MAP was formally incorporated in 1987 in Louisiana as a nonprofit corporation. See Exhibit D attached hereto. The corporation is restricted to engage only in such conduct as may be permitted by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1954. MAP has amended its Articles of Incorporation to permit the operation of a noncommercial educational broadcasting facility conducting educational programs.¹³

¹² Exhibit C pages 3-4.

¹³ See Exhibit E attached hereto.

MAP's incorporation and nonprofit status is essentially the same as the Commission approved in Lower Cape when it found a similarly situated nonprofit corporation qualified as eligible to run a station, and held that the advancement of an educational program was within its purposes. The educational goals and program advanced by MAP are well within the standards set in the Commission's Notice of Inquiry and its Palm Bay decision and thus the organization should qualify as eligible for the reserved band.¹⁴

Lest there be any continued confusion about the goals and educational program proposed by MAP, Mr. Franks has supplied another Declaration attached as Exhibit F hereto. Mr. Franks reaffirms his previous statements and testifies that the station will broadcast instructional and general educational programs to the community of license including programs in Spanish and programs directed to the educational needs of the black community. He states further that MAP will use the station to ascertain and develop programming for the educational needs of Alexandria.

Although the Commission's standards have been left vague by its failure to clarify its processing rules through the 1978 Notice of Inquiry or other rule makings, MAP has proven that it is a nonprofit corporation with the purpose of operating a noncommercial educational radio station. It proposes

¹⁴ The Commission has even held that a church can qualify as an noncommercial applicant, provided its goal is educational in the operation of the station. Bible Moravian Church, Inc., 21 RR 2d 492, 493 (1971); Moody Bible Institute, 40 RR2d 1264 (1977).

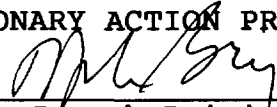
instructional and general educational programs and has stated educational goals for its operation. MAP meets the Commission's standards for eligibility as a noncommercial applicant under Palm Bay and other applicable precedents.¹⁵

In conclusion, since there is no issue of material fact for determination at the hearing concerning the designated Issue 1, MAP requests it be granted this motion for summary decision.

Respectfully submitted,

MISSIONARY ACTION PROJECTS

By:


F. Joseph Brinig
Lawrence Bernstein

Its counsel

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April 17, 1992

¹⁵ As an example of the programming statements found acceptable to the FCC, Exhibit G is an excerpt from the application of Dry Prong Educational Broadcasting Foundation, the competing applicant, and a current noncommercial licensee.

Exhibit A

FCC Notice of Inquiry
July 13, 1978

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-164; FCC 78-382]

ELIGIBILITY FOR NONCOMMERCIAL EDUCATIONAL FM AND TV BROADCAST STATION LICENSES

Inquiry

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Commission, on its own motion, proposes to consider changes in its rules governing eligibility to become a licensee of a noncommercial educational FM or TV station.

DATES: Comments must be received on or before August 15, 1978, and reply comments on or before September 15, 1978.

ADDRESSES: Eligibility Standards Proceeding, Federal Communications Commission, P.O. Box 19600, Washington, D.C. 20036

FOR FURTHER INFORMATION CONTACT:

Jonathan David, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: June 7, 1978.

Released: July 13, 1978.

In the matter of amendment of the Commission's rules governing the eligibility for noncommercial educational FM and TV broadcast station licenses, BC Docket No. 78-164.

1. The Commission has under consideration its rules governing who is eligible to become a licensee of an educational FM or TV broadcast station. Under § 73.501 of the Commission's rules, the 20 channels at the lower end of the FM band are reserved for noncommercial educational FM broadcasting. Individual TV channels are set aside for such use in the Television Table of Assignments § 73.606(b).¹ As indicated in §§ 73.503 and 73.621 of the rules, these reserved channels will be licensed only to non-profit "educational organizations." The question before us is who fits this description and thus becomes eligible.

2. Over the years, the Commission has had occasion to consider various cases dealing with what was meant by educational organizations or educational broadcasting. For the most part, these were actions relating to specific applications. However, in 1960 in an action of more general applicability, we rejected as being too narrow a proposal which would have limited licensing of stations on these reserved chan-

nels to institutions which are accredited by state departments of education or are recognized by regional and national accrediting organizations. S. Nisenbaum, 19 R.R. 1175 (1960). In so doing, the Commission pointed out that other organizations seeking authorizations would continue to be granted " * * * only after thorough consideration of their qualifications as a non-profit educational organization and their showing that they would provide * * * a service for the advancement of an educational program," at 1177. Although the rules have remained essentially unchanged for some period of time, educational broadcasting itself has evolved during this time. In recent years, there has been a considerable growth in the licensing of "public" broadcast stations in this reserved band. These are stations, licensed to organizations which are devoted to providing educational programming in the broader sense, not limiting themselves to the earlier role which focused heavily on instructional programming. Nonetheless, the term "educational" continued to apply,² as each of the entities in question established a non-profit educational organization to pursue their stated educational objectives. This was consistent with the Commission's observation (made in connection with educational television stations in 1965) that " * * * the channels reserved for educational use are intended to serve the educational and cultural broadcast needs of the entire community to which they are assigned * * *." Fifth Report, Memorandum Opinion and Order on Fostering Use of UHF Television Channels, 2 FCC 2d 527 at 542 (1965).

3. As these evolutionary developments were taking place, particularly following passage of the Public Broadcasting Act of 1967, it became increasingly clear that the whole issue of licensing eligibility for the "noncommercial educational" television allocations and FM band needed to be reexamined. Partly this was a matter of insuring that the standards reflected the existing situation and the Commis-

¹In Docket No. 20735, we indicated an intention to explore a wide range of issues relating to educational FM assignments and other policies. We are today acting on portions of this docket, but to the extent that docket was anticipated to address basic questions of the eligibility for and role of educational stations, we will deal with these here, where we can address the eligibility question as it applies to both radio and television. In addition, we are today dealing with another docket, Docket 21136, which addresses the basic question of the "noncommercial" nature of both educational FM stations and the television allocations reserved for this purpose. Satisfactory resolution of that issue may assist in our resolution of definitional issues in this inquiry and we urge parties commenting in both to cross-reference their comments.

sion's views regarding how best to use these channels. It also involved the need to develop standards which provided the clearest possible guidance for the processing of applications. At first, this had been no real problem. Gradually, however, cases arose in which the educational nature of an applicant or its purposes might not be entirely clear. Our concern has been to insure that an applicant's proposal is designed to serve educational purposes. In so doing, the Commission had examined the totality of the application to determine the applicants' primary purposes and to insure that they were educational. However, this gave rise to questions in cases where a "public broadcasting" or other applicant had additional goals in mind as well as purely "educational" ones in the narrowest instructional sense of that word. Because our standards had remained unchanged, the Commission has had to deal with these cases on an ad hoc basis to determine whether the licensee's principal emphasis was on programs of an educational nature.³

4. With these facts in mind it is clear that the Commission needs to conduct an inquiry into the area of eligibility standards. We have some preliminary thoughts which are contained in the five alternatives set forth below. These alternatives, we stress, are not necessarily intended to be exclusive. They could be used in combination, so that an applicant that met one of a number of alternative eligibility standards would be qualified. Other suggestions as to the approach we might follow are also welcome. Overall, this series of options is designed to offer for comment a series of possible ways to develop new standards which would take recent developments into account. Hopefully, they would end the difficulties occasioned by continued use of an old ad hoc standards and processing guidelines to apply to new situations. To understand more specifically what is involved in the proposed responses, some more detailed description of the alternatives is required. The fact that an alternative is included should not be taken as indicating that the alternative is likely to be adopted. In fact, we have reservations about aspects of several of the alternatives.

5. Depending on the course of action adopted, various changes in the Commission's rules relating to noncommercial educational stations could be nec-

²This question was presented, for example, by the Pacifica Foundation, Washington, D.C., application, 24 FCC 2d 223 (1969), and by the Moody Bible applications for stations at East Moline, Ill. (BPED-1845) and Boynton Beach, Fla. At the time the Commission granted the latter applications it established processing standards to apply in such cases in the future. These standards are attached as appendix A to this Notice.

¹In a few instances, individual FM channels in the commercial portion of the FM band are also set aside for educational use.

essary and parallel changes in application forms also would be required. Among the rules which could be affected are those directly governing who is eligible to be the licensee of an educational FM or TV station and what kind of service the stations are expected to provide. [Section 73.503 applies to educational FM stations and Section 73.621 applies to TV stations.] The original and renewal applications for noncommercial educational FM and TV stations may need revision. After review of the responses to this Notice of Inquiry we can commence any necessary rule making procedures. As can be seen from the outline of the alternatives, the possible approaches vary greatly.

6. Alternative One. One possible approach would be to delete the current requirement in the Commission's rules which limits these reserved channels to noncommercial educational purposes. Instead, they could be used by any non-profit organization recognized as such by the Internal Revenue Service, and could therefore be used for other noncommercial purposes not previously permitted by the Commission. Such a change could be accomplished through a few changes in the present rules along with some changes in the pertinent application forms. While using this approach would help avoid the problems in examining the purposes of an organization, it could be argued that employing this approach would be contrary to Congressional intent in its recognition of a particular type of noncommercial radio and TV, through the Public Broadcasting Act of 1967. The term "public broadcasting" has gained considerable currency in the statute and elsewhere even though it does not have a precise definition. Also, it is necessary to bear in mind that even where the term is used, as in section 390 et seq. of the Communications Act, there continues to be a reference to educational television and radio. While it could be argued that these provisions are not intended to limit the Commission's licensing policies, there is some reason to believe that a change of this sort could be counter to the understanding of the Congress on how these reserved channels were to be used. In addition, if these channels were used for these other purposes to such an extent that it was to the exclusion of educational uses, it could have the effect of defeating the Congressional intent to underwrite the construction of educational television and radio facilities. In effect then, in exchange for its simplicity of accomplishment, this alternative represents the most profound departure from past practice and the premises on

which other agencies and the Congress have acted. This can be seen from an examination of the educational purposes outlined in section 396(a) of the Act, which was added by The Public Broadcasting Act of 1967.⁴ Thus, those wishing to urge adoption of this alternative should address these points in their filings and explain how the change could be adopted consistent with these Congressional declarations.

7. Alternative Two. Pursuant to sections 390 et seq. of the Communications Act, added by The Educational Broadcast Facilities Act of 1962, grants are provided for the construction of educational broadcasting facilities, and this grant program is administered by the Department of Health, Education, and Welfare (HEW). Since HEW has adopted guidelines to implement the statutory provisions⁵ which provide eligibility standards, the Commission could use these standards in lieu of its own. The effect might be to limit somewhat the group of eligible entities, as these standards seem to be somewhat more restrictive than those used by the Commission. Whether this result would be desirable turns on a decision by the Commission of the

⁴Section 396(a). The Congress hereby finds and declares—

(1) That it is in the public interest to encourage the growth and development of noncommercial educational radio and television broadcasting, including the use of such media for instruction purposes;

(2) That expansion and development of noncommercial educational radio and television broadcasting and of diversity of its programming depend on freedom, imagination, and initiative on both the local and national levels;

(3) That the encouragement and support of noncommercial educational radio and television broadcasting, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(4) That it furthers the general welfare to encourage noncommercial educational radio and television broadcast programming which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence;

(5) that it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make noncommercial educational radio and television service available to all the citizens of the United States;

(6) That a private corporation should be created to facilitate the development of educational radio and television broadcasting and to afford maximum protection to such broadcasting from extraneous interference and control.

⁵It should be noted that section 392(g)(1) specifies that such facilities will be used only for educational purposes.

kinds of operations it wishes to foster, bearing in mind that HEW's standards as to private educational institutions are more limiting than the Commission's. While use of this approach would not necessarily avoid the difficult judgmental problems which would arise, it would shift the onus to HEW to resolve these issues. Those wishing to advocate this approach should explain the advantages they see in such a relinquishment of Commission authority to make the judgment involved in deciding on the acceptance of applications for filing.⁶

8. Alternative Three. Another possibility involves a redefinition of the eligibility standards employed by the Commission so as to encompass only those full-time, general curriculum schools or institutions which are qualified to award degrees or issue diplomas. These schools would be those which are accredited or whose credits are transferable to other qualified institutions. If this approach were used, it would not be necessary to inquire as deeply into the educational purposes of the applicant since there would be an expectation that any such station would operate in conjunction with the educational institution. As with the previous alternative, there would be the advantage of the ease of administration, but the result would be to greatly restrict those eligible. In fact, the result could be that some of the very organizations outlined in section 392(a)(1) of the Act which were established in the last two decades specifically to operate these stations would become ineligible. This category of educational organizations is a broad one, running the gamut from Pacifica to the Greater Washington Educational Telecommunications Association, licensee of Stations WETA-TV and WETA-FM in Washington, D.C. Also, since there are a sizeable number of existing stations in this category, use of this standard would also require a decision on what to do about "grandfathering." Those urging this approach should respond to these points.

9. Alternative Four. Instead of using the nature of the entity in question to decide eligibility, the Commission could focus on the nature of the educational program to be furthered. As matters now stand, organizational applicants are called upon in our applica-

⁶We note that pending legislation in both the House and Senate would transfer this program to the Commerce Department's National Telecommunications and Information Administration, and change some of the eligibility provisions and priorities of funding for the program. Parties commenting on this approach should address how adoption of this legislation would affect their stations.

tion process to state how the station would be used in furtherance of an educational program, but the statement provided is often not particularly precise or informative. In fact, institutional applicants are not even required to respond to this specific question, although similar information is elicited in response to several other related questions. If greater stress were put on the nature of the proposed programming rather than in the statement of purpose contained in the articles of incorporation, it might be possible to limit the inquiry into the nature of the applicant's organization to those points necessary to establish that it is permitted to operate a station in the fashion indicated and that it possesses the requisite qualifications. While this approach avoids the problems encountered in evaluating who would be eligible, it would not avoid at least some inquiry into what programming would be offered. It would continue to be necessary to determine if the purposes were educational in nature and if the thrust of a station would be educational. Such close scrutiny of programming may give rise to First Amendment concerns. Moreover, its use could lead to problems in defining what is meant by educational programming. Suggestions from proponents of this approach on how to avoid these problems are invited.

10. Alternative Five. Under this alternative, for noninstitutional applicants, our focus would be to insure that these stations function in a fashion reflective of service to their locality. Unlike the preceding choices, this alternative would avoid the necessity of examining the nature and purposes of the applicant to see if they were educational rather than other, albeit meritorious, ones. Drawing on our ascertainment and related principles, these stations would be redefined as public broadcasting/community service stations. This could obviate the need to examine the program proposal to see if a certain percentage of programming is educational. Instead, these stations would be expected to render service to their communities and to be reflective of the needs they found to exist there. While the presentation of light entertainment programming would not be foreclosed, the essence of these stations would be community service in its various aspects, including but not limited to educational service alone. Implementing this approach might require some alteration and strengthening of the existing educational station ascertainment requirements, particularly as to radio stations, but it would be a logical extension of the Commission's noncommercial educational ascertainment policies now in force. Moreover, it would be an extension of our view of the impor-

tance of localism. This policy has the same underpinning which underlies the process of licensee/public dialogue utilized in both the commercial and noncommercial broadcasting. In addition to the above requirement, to avoid the need for the Commission to involve itself in scrutiny of the licensee's programming efforts, the Commission could substitute a requirement that the governing board of the licensee be composed of those individuals who represent significant groups and organizations which are found in the community. These representatives could then decide on the programming and insure that it is responsive. The members of such a governing board would be like the list of community leaders as it would appear on an ascertainment survey. Needless to say, this would not exclude religious groups. In fact, the expectation would be that they would be included. The only limitation that would possibly be invoked in this regard would be one intended to insure that no single religious view or persuasion were expressed to the exclusion of others. Although a standard such as this could be limited to applications for new stations, if the Commission wished to apply it to existing stations, it could be done through a requirement that the licensee establish an advisory group or it could be done by requiring a more thorough ascertainment procedure, or both. While the advisory group or controlling board is a new concept in terms of Commission requirement, it already exists to some degree on a voluntary basis in various places, where the noncommercial educational licensee, particularly community based "public broadcasting" licensees, draws on a number of diverse elements to form its board. Moreover, use of such a requirement could avoid some of the problems which have arisen on occasion over charges brought to the Commission at renewal, that some educational licensees are not representative of their communities and do not program with the needs of the entire community in mind. Because of the increasing scarcity of the noncommercial educational channels, more specific requirements of broad community service may well be most consistent with our mandate to insure the most efficient use of the spectrum. Comments on the advantages and disadvantages of this approach are invited.

11. The Commission is eager to obtain comments from all interested parties. Our goal is to formulate policy guidelines that will promote certainty as well as fairness and which in so doing will best serve the purposes for which the channels have been reserved. We have no firm views at this stage and welcome all suggestions on these plans, any variations on them or on any other suggestions which might

be offered. Depending on the nature of the responses we contemplate issuing a notice of proposed rulemaking. We urge the parties to deal with more than the abstract merit of the proposals they favor. They should discuss the practical effect of their possible adoption and the means of their administration.

12. Pursuant to the applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments on or before August 15, 1978, and reply comments on or before September 15, 1978. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such reply comments shall be accompanied by a certificate of service.

13. In accordance with the provisions of § 1.429 of the Commission's rules and regulations, an original and five copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. In order to be considered, all filings must be filed with the Commission at the following address:

Noncommercial Educational Standards Proceeding, Federal Communications Commission, P.O. Box 19600, Washington, D.C. 20036.

14. All timely filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

15. Authority for the actions taken herein is contained in Sections 4(i), 301, 303 and 403 of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS
COMMISSION.

WILLIAM J. TRICARICO,
Secretary.

Attachment: Appendix *

APPENDIX

PROCESSING GUIDELINES

Institutional applicants:

"Institutional" applicants (i.e., those which operate a bona fide fulltime school) may qualify for noncommercial educational

*This special filing procedure is designed to avoid problems which otherwise could arise if, as may be the case here, there is a large flow of informal comments. Those filing in person may deliver their documents to the Secretary of the Commission.

*The appendix sets forth the standards now used by the staff in processing applications. This is the first occasion that the standards themselves have been made public.

FM stations only in those communities where they operate a bona fide fulltime school. This is the case regardless of whether the school and its courses of instruction are religiously oriented or secular.

Organizational applicants:

Organizational applicants may qualify in any community. But, they must demonstrate that they have an educational goal and are committed to the advancement of an educational program.

In considering whether organizational applicants have a suitable educational program, we will give primary weight to those programs which may properly be categorized as "instructional" or "general educational." The definitions of these terms are as follows:

Instructional (I) includes all programs designed to be utilized by any level of educational institution in the regular instructional program of the institution. In-school, in-service for teachers, and college credit courses are examples of instructional programs.

General educational (GEN) is an educational program for which no formal credit is given.

We recognize the fact that noncommercial educational FM stations may present a wide variety of programming including such matters as light entertainment, gospel or popular music, and sports. Nevertheless, for the purpose of determining the applicant's qualifications, we must place principal emphasis on those programs, as defined above, which are clearly educational in nature.

In determining whether a program may properly be categorized as "instructional" or "general educational," we will not disqualify any program simply because the subject matter of the teaching or instruction is religious in nature. While not all religious programs are educational in nature, it is clear that those programs which involve the teaching of matters relating to religion would qualify. In this regard, some programs will properly be considered to be both instructional and religious or both general educational and religious. As in all matters relating to programming, we will defer to the judgment of the broadcaster unless his categorization appears to be arbitrary or unreasonable.

[F.R. Doc. 78-19713 Filed 7-17-78; 8:45 am]

[6712-01]

[47 CFR Part 76]

[CT Docket No. 78-206; RM-3102; FCC 78-460]

CABLE TELEVISION CERTIFICATE OF COMPLIANCE PROCESS

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule-making.

SUMMARY: The Commission is considering changing the rules concerning the cable television Certificate of Compliance process. This is in furtherance of efforts to "deregulate" the cable industry, and would replace the present system of certification with a simpler, more streamline registration process.

DATES: Comments must be received on or before August 14, 1978, and reply comments on or before September 1, 1978.

ADDRESS: Office of the Secretary, Federal Communications Commission, 1919 M. Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Jim Ewalt, Cable Television Bureau, 202-632-6468.

SUPPLEMENTARY INFORMATION:

Adopted: June 28, 1978.

Released: July 12, 1978.

By the Commission: Commission Quello absent; Commissioner Washburn concurring in the result.

In the matter of amendment of part 76 of the Commission's rules relating to the Cable Television Certificate of Compliance Process, CT Docket No. 78-206, RM-3102.

1. Notice of proposed rulemaking is hereby given in the above-referenced matter which relates to changes in the rules concerning the cable television Certificate of Compliance process.¹

2. In 1972, in the "Cable Television Report and Order," FCC 72-108, 36 FCC 2d 143 (1972), the Commission adopted Subpart B of Part 76 of the rules, which provided essentially that no cable television system could commence operation or add carriage of a television broadcast signal unless it had first filed for and obtained from the Commission a "Certificate of Compliance." All existing cable television systems were required to file for a Certificate of Compliance by March 1977. When these requirements went into force, in March of 1972, the Commission had cable television rules on the books relating to broadcast signal carriage, technical standards, access to and use of nonbroadcast channels, fairness, equal opportunities for political candidates, lotteries, obscenity and sponsorship identification, cross-ownership, pay cable television programming, the appropriate division of regulatory jurisdiction between the Federal and local levels of government, and equal employment opportunity. This body of regulation was felt to be necessary to protect cable subscribers and television viewers generally from a loss or degradation of local television service, to protect consumers of cable service from dangers inherent in cable as a

¹We note the *Petition for Rule Making* (RM-3102) filed May 8, 1978, by the Community Antenna Television Association which also proposes elimination of the certification process. We are terminating RM-3102 in order to consolidate the proceedings and accordingly, all comments received in response to RM-3102 will be considered here.

monopoly or quasi-monopoly industry, and to promote diversity of content and control over cable television distributed programming. It was felt that cable was about to enter into a period of unparalleled growth in terms of number of subscribers and the sophistication of the service those systems could potentially offer.

3. Our perception of cable television in 1972 was that it partook of some of the characteristics of radio broadcasting and some of the characteristics of a public utility or common carrier but was identical to neither and deserving of separate regulatory treatment. Thus, in the "Cable Report" the Commission affirmed its view that:

cable systems are neither broadcasters nor common carriers within the meaning of the Communications Act. Rather, cable is a hybrid that requires identification and regulation as a separate force in communications. 36 FCC 2d 143, 211 (1972), para. 191.

In accordance with this view, the Certificate of Compliance process was to be something of a cross between the system of licensing a radio station for between 3 and 5 years and the process of granting indeterminate certificates of public convenience and necessity to communications common carriers under Section 214 of the Communications Act.

4. The Certificate of Compliance application and review process was intended to serve a number of related purposes: To "assure that effective public notice of new proposals is given; assure that applications contain full information on the details of system operations; and assure that new cable proposals are, without exception, reviewed for consistency with our rules." 36 FCC 2d at 185, para. 109. The process was thought of as a means of obtaining citizen input with respect to the operation of particular cable systems and it was regarded as an important means of screening service proposals prior to systems' commencing operations and establishing equities and expectations that could, if later changed, cause dislocations and subscriber dissatisfaction. In general, it was hoped that the process would be a useful complement to the substantive regulatory program.²

5. Significant changes in regulatory philosophy and in the details of our cable television regulation have occurred since 1972. Of greatest relevance to this review are the substantive revisions that have been made in

²The process was also intended to be useful to the cable system operator by letting it know at the outset whether the activity it was proposing complied with a rather complicated set of rules. The Commission's seal of approval through this process would be a protection against an investment being later put in jeopardy through charges of noncompliance.

Exhibit B

Exerpt from the application of
Missionary Action Projects

FCC 340

Approved by OMB
3060-0034

Expires 4/30/92

See Page 23 for information
regarding public burden estimate

APPLICATION FOR CONSTRUCTION PERMIT FOR
NONCOMMERCIAL EDUCATIONAL BROADCAST STATION
(Carefully read instructions before filing form) Return only form to FCC

For Commission Use Only

File No.

Section I - GENERAL INFORMATION

1. Name of Applicant Missionary Action Projects			Send notices and communications to the following person at the address below: Name William D. Franks		
Street Address or P.O. Box P.O. Box 6506			Street Address or P.O. Box P.O. Box 6506		
City Shreveport	State LA	ZIP Code 71136	City Shreveport,	State LA	ZIP Code 71136
Telephone No. (Include Area Code) 318-687-0157			Telephone No. (Include Area Code) 318-687-0157		

2. This application is for: ☐ AM ☒ FM ☐ TV

(a) Channel No. or Frequency

210 89.9 mHz

(b) Principal
Community

City

State

Alexandria

LA

(c) Check one of the following boxes:

- ☒ Application for NEW station
- ☐ MAJOR change in licensed facilities; call sign: _____
- ☐ MINOR change in licensed facilities; call sign: _____
- ☐ MAJOR modification of construction permit; call sign: _____
- File No. of construction permit: _____
- ☐ MINOR modification of construction permit; call sign: _____
- File No. of construction permit: _____
- ☐ AMENDMENT to pending application; application file number: _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application?

☐ Yes ☒ No

If Yes, state:	Call letters	Community of License	
		City	State

Section II - LEGAL QUALIFICATIONS

Name of Applicant

Missionary Action Projects

1. Applicant is: (Check one box below)

- ☐ (a) governmental or public educational agency, board or institution
- ☐ (b) private nonprofit educational institution
- ☒ (c) Other (specify) Non-profit corporation

2. For applicants 1(c) only, describe in an Exhibit the nature and educational purposes of the applicant.

Exhibit No.
1

3. For applicants 1(c) applying for a new noncommercial educational television station only, describe in an Exhibit how the applicant's officers, directors and members of its governing board are broadly representative of the educational, cultural and civic segments of the principal community to be served.

Exhibit No.
DNA

4. Describe in an Exhibit how the proposed station will be used, in accordance with 47 C.F.R. Section 73.503 or Section 73.621, for the advancement of an educational program.

Exhibit No.
1

5. Is there any provision contained in any by-laws, articles of incorporation, partnership agreement, charter, statute or other document which would restrict the applicant in advancing an educational program or complying with any Commission rule, policy or provision of the Communications Act of 1934, as amended?

☐ Yes ☒ No

If Yes, provide particulars in an Exhibit.

Exhibit No.

CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

6. (a) Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (See Instruction B to Section II)

☐ Yes ☒ No

(b) Will any funds, credits or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☒ No

If the answer to (b) above is Yes, attach an Exhibit giving full disclosure concerning this assistance.

Exhibit No.
DNA

7. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body as to the applicant or any party to this application in a civil or criminal proceeding brought under the provisions of any law related to the following:

Any felony; broadcast related antitrust or unfair competition; criminal fraud or fraud before another governmental unit; or discrimination?

☐ Yes ☒ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☒ No

If the answer to (a) and/or (b) above is Yes, attach an Exhibit giving full disclosure concerning persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter.

Exhibit No.
DNA

EXHIBIT 1

The applicant will seek to develop relationships with schools, educational institutions and other traditionally, educationally oriented charitable and public service organizations.

The applicant will utilize the facilities of the station to support the educational programs of the community: by broadcasting instructional programming, by broadcasting programming of substantial educational value to the whole community, particularly seeking to present materials the applicant determines to be needed to bring balance to the educational needs of the community, and by utilizing the station as appropriate for training students in the skills necessary for service in the broadcasting industry.

The applicant proposes to offer instructional, talk, music appreciation, news and family oriented programs.

Exhibit C

Declaration of William D. Franks

December 20, 1990

DECLARATION OF WILLIAM D. FRANKS

I, William D. Franks, President of Missionary Action Projects hereby declare under penalty of perjury that this statement is true and correct:

I have read the petition to Deny filed by Alexandria Broadcasting company ("ABC") and I understand that ABC alleges that Missionary Action Projects ("MAP") will operate our proposed noncommercial educational station in Alexandria, Louisiana as a commercial station. This is not true. We will operate our proposed station as a bona fide noncommercial station and will abide by all FCC rules and policies concerning noncommercial operation.

We are an ongoing community service organization which has been working for the past ten years in missionary, charitable, and educational causes. MAP has helped to organize and build facilities for the Colegio Bella Jerusaleun school in Santo Domingo, Dominican Republic. We have worked on this project from 1983 until the present and the school now has 960 students. We continue to work with them. I personally, on behalf of MAP, have made two trips so far this year to the Dominican Republic and will make a third shortly after Christmas.

MAP is working with the Inglesia De Dios Camino De Salvacion (Church of God) in Eagle Pass, Texas. we are

beginning a ministerial training school for ministers and workers. Construction was begun this past summer on the first dormitory for the school with workers from Louisiana, Oklahoma, Missouri, and Texas participating. Many of our workers were from the Church of God and the Baptist Church. Additional youth and adult groups will be working there in the summer of 1991, building additional facilities. We hope that operations will begin in September 1991.

In 1984, I, helped to organize and build facilities for the Guatemala Bible College in Guatemala, Central America. MAP continues to be actively involved in Guatamalan work.

We incorporated Missionary Action Projects, in 1987. Since that time, we have had an eye towards expanding our community outreach programs and our charitable and ministerial operations. We are a free-standing agency of the Church of God in Anderson, Indiana, which is a tax-exempt organization section 501(c)(3) of Internal Revenue Code.

I served as pastor of the Oakmont Church of God in Shreveport, Louisiana for thirty-five years. From 1965 until 1974, we operated the Oakmont Christian School. At the time, the school closed in 1974, we maintained classes through the twelfth grade. Presently, I serve on the Board of Trustees of the Mid-America Bible College in Oklahoma City, Oklahoma, in my eleventh year on that board. I also serve on

the Executive Committee in the capacity of Vice-Chairman of the Board. My term expires in 1994.

I am also a member of the Association of Evangelists of the Church of God in Anderson, Indiana and I serve on the Executive Committee of that organization. I am a member of the Executive Committee of the Louisiana Assembly of Church of God and, presently Chairman of the Department of Church Service for our Assembly.

As director of MAP, I am a co-director of the Central Louisiana Singles Fellowship. This group, along with MAP, makes an annual trip to Eagle Pass, Texas, and Piedras Negras, Mexico to take clothing, food, toys and other items that have been collected throughout the year to needy people and children there. This trip is traditionally made in December. For purposes of collection, we use many of the facilities of the Faith Baptist Church in Alexandria, Louisiana and a large number of churches throughout Central Louisiana take part in the collection of items.

MAP is excited about the prospect of owning and operating a noncommercial radio station in Alexandria. We feel that we are in a unique position to provide programs to an underserved audience.

I believe radio to be a most effective tool when used in the educational field. MAP has as its desire and objective to

provide and distribute programs and to train people in the field of broadcasting.

MAP will, through this broadcast medium, seek to help resolve community problems and issues. Map will provide news coverage, public service announcements and public affairs programming to inform and educate the public in developing a better community. Map will bring an awareness of opportunities and needs of the communities in its service area.

MAP proposes to provide programming and educational opportunities for the large black population of Alexandria. To accomplish this, MAP will work closely with the black educational institutions and black churches in the absence of other significant media attention being directed to these groups in Alexandria. I perceive a need for a noncommercial educational station to serve the black audience.

Another ethnic group, although somewhat smaller, whose needs are not being met, is the Hispanic community. MAP proposes to offer educational and religious broadcasts in the Spanish language. To the best of my knowledge, I do not know of any Spanish programming in the Alexandria area.

Prospective programs to be broadcast include:

Daily Programs:

FOCUS ON BLACK WOMEN

CARL ROWEN REPORT

INSIDE GOSPEL (BLACK PRODUCED)

TODAY IN BLACK HISTORY

UNSHACKLED

NEWS

FOCUS ON THE FAMILY

Weekly Programs:

LAW ENFORCEMENT WORKS FOR YOU

BLACK BUSINESS REPORT

INSPIRATION ACROSS AMERICA

ODYSSEY USA

FOCUS ON THE FAMILY WEEKEND

YOUR SOCIAL SECURITY

LA HORADE HERMANDAD CRISTIANA

The opportunity to co-locate our facilities with those of KWDF, Ball, Louisiana, represents a significant advantage for our operation of our station. As a noncommercial entity, we will be restricted in our ability to raise money from sponsors and advertisers. We understand the rules of the FCC concerning broadcast over this type facility and know we will need to conserve our funds very diligently.

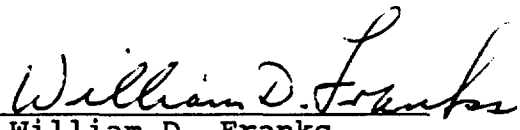
KWDF-AM, represents a personal investment of mine. I am

currently a minority partner, owning 20% of the station. My ownership will not affect the operation of the noncommercial station, which will be owned by MAP, a non-profit corporation.

Our noncommercial station will carefully observe all FCC prohibitions on its operations, including restriction of cross-promotion of the commercial stations in the area.

Our proposed operation of the noncommercial station will be on a nonsectarian basis; that is to say facilities will be open to all individuals who need them. We plan to offer the facilities of the station to all educational institutions, regardless of denominational affiliation.

I am happy to provide further information to the Commission if it is desired.


William D. Franks

December 20, 1990